

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #3	CCRB Case #: 201507917	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/14/2015 12:20 AM	Location of Incident: In front of 666 Seneca Avenue	Precinct: 104	18 Mo. SOL 3/14/2017	EO SOL 3/14/2017	
Date/Time CV Reported Wed, 09/16/2015 12:35 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/18/2015 11:36 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Claymont Defreitas	20198	952649	104 PCT
2. POM Patrick Winberry	24573	953572	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Daniel Delaney	02297	945653	104 PCT
2. POM Jonathan Hili	19287	952850	104 PCT
3. POF Greysy Archange	05303	944775	104 PCT
4. POM Andre Taveras	09048	939556	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Claymont Defreitas	Abuse: PO Claymont Defreitas threatened to arrest § 87(2)(b)	
B.POM Claymont Defreitas	Force: PO Claymont Defreitas struck § 87(2)(b) with the door of his vehicle.	
C.POM Claymont Defreitas	Force: PO Claymont Defreitas used physical force against § 87(2)(b)	
D.POM Patrick Winberry	Force: Patrick Winberry used physical force against § 87(2)(b)	
E.POM Claymont Defreitas	Abuse: PO Claymont Defreitas threatened § 87(2)(b) with the use of force.	
F.POM Claymont Defreitas	Abuse: PO Claymont Defreitas interfered with § 87(2)(b)'s use of a recording device.	

### Case Summary

§ 87(2)(b) filed the following complaint with IAB on September 16, 2015 via telephone generating log number 15-27210. The complaint was received at the CCRB on September 18, 2015.

On September 14, 2015, § 87(2)(b) was assaulted at a bar located at 666 Seneca Avenue in Queens. § 87(2)(b) called 911 and officers from the 104<sup>th</sup> Precinct arrived. When the officers could not find the man that assaulted § 87(2)(b) he complained and continued to tell the officers that he wanted the man arrested. PO Claymont Defreitas of the 104<sup>th</sup> Precinct told § 87(2)(b) that if he did not leave, he would be arrested (**Allegation A**). While PO Defreitas prepared a Complaint Report in his vehicle, § 87(2)(b) walked up to the driver's side window to speak with him. PO Defreitas opened the car door and struck § 87(2)(b) in the head with the door (**Allegation B**). PO Defreitas exited the vehicle and shoved § 87(2)(b) in the chest with both hands (**Allegation C**). § 87(2)(b) was held back by other civilians and tried to walk back towards PO Defreitas. PO Patrick Winberry of the 104<sup>th</sup> Precinct pushed § 87(2)(b) back and told him to leave the location (**Allegation D**). § 87(2)(b) attempted to take a picture of PO Defreitas' license plate. PO Defreitas moved the police vehicle forward towards § 87(2)(b) as if he was going to hit him with the vehicle before driving away (**Allegation E**). PO Defreitas moving the vehicle forward prevented § 87(2)(b) from taking a picture of the license plate (**Allegation F**).

There is security camera footage for this case from the location.

An extended version of the video is available for review in IA #21. The video embedded below is a shortened version that depicts the conduct covered under Allegations B, C, D, E and F.

This case is over 90 days old due to extensive contact attempts to independent witnesses.



201507917\_20150923\_1457\_DM.mp4

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation and did not want to meet with the officer.
- A new request was sent to the NYC Comptroller's office for any Notice of Claim requests on December 28, 2015 and will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 01).
- PO Claymont Defreitas has been a member of service for 3 years and has no substantiated allegations against him. This is PO Defreitas' first complaint.
- PO Patrick Winberry has been a member of service for 3 years and has no substantiated allegations against him. This is PO Winberry's first complaint.

### Potential Issues

- § 87(2)(b) was present for the incident but could not be reached to provide a statement. § 87(2)(b) could not provide an address or date of birth for § 87(2)(b) § 87(2)(b)'s phone number was called 5 times but he never returned the phone calls. § 87(2)(b)

§ 87(2)(b) was told to inform § 87(2)(b) to return the undersigned's phone calls but § 87(2)(b) never did.

- At the time of the investigation the bouncers from 666 Seneca Avenue no longer worked at the location. The owner of the bar provided the phone number to the company that provided the bouncer services to them. Several contact attempts were made to the company and letters were sent to their business address found on LexisNexis with no response. The bouncers from the night of the incident remain unidentified.

### **Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO Claymont Defreitas threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that he continuously told the officers that he wanted the man that punched him to be arrested. He also stated that he was told approximately 5 times to leave the location. He alleged that as he spoke with the officers, PO Defreitas told him that if he continued to act in that manner that he would be arrested instead. He was then told to leave the location or he would be arrested.

PO Defreitas stated that § 87(2)(b) continuously screamed, cursed at officers and complained that they were not doing their jobs. § 87(2)(b) was taken into the bar approximately three times to look for the man that assaulted him and each time he could not be found. PO Defreitas stated that § 87(2)(b) caused a crowd to gather and he intended to issue him a summons for disorderly conduct. However Sgt. Delaney instructed PO Defreitas not to issue the summons and he complied. § 87(2)(b) was told at least 20 times to leave the location. PO Defreitas stated that he advised § 87(2)(b) that he was disobeying a lawful order to leave the location but he did not recall if he threatened to arrest him.

PO Archange was consistent with PO Defreitas and stated that § 87(2)(b) was belligerent and acted in an aggressive manner because he was not happy about the man who punched him not being arrested. She also stated that she personally asked § 87(2)(b) to leave the location and stated that he could have been arrested for disorderly conduct.

PO Winberry stated that officers told § 87(2)(b) to leave the location multiple times and he did not comply.

The video attached in IA #21 shows that § 87(2)(b) was agitated through the majority of the first half of the incident. At 4:00 of the video he could visibly be seen yelling at the officers on scene. At 4:45 PO Defreitas is shown trying to calm him down by gesturing with his hands at chest level with his palms out in an act commonly interpreted as “calm down.” At 6:45 of the video § 87(2)(b) is seen yelling at PO Defreitas and Sgt. Daniel Delaney. He then attempted to enter the bar but was stopped by the bouncers. He was finally brought into the bar by several officers. Several officers are seen throughout the video gesturing to § 87(2)(b) to calm down and to walk away.

According to New York Penal Law 240-20 for disorderly conduct, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: 1. He engages in fighting or in violent, tumultuous or threatening behavior; or 2. He makes unreasonable noise; or 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or 4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or 5. He obstructs vehicular or pedestrian traffic; or 6. He congregates with other persons in a public place and refuses to comply with a lawful order of the

police to disperse; or 7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (BR 02).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Force: PO Claymont Defreitas struck § 87(2)(b) with the door of his vehicle.**

**Allegation C – Force: PO Claymont Defreitas used physical force on § 87(2)(b)**

§ 87(2)(b) stated that he went up to the police vehicle's window to ask PO Defreitas a question. He stated that his head was close to the window but not inside. When he spoke, PO Defreitas opened the car door and hit him in the face with it. He did not recall if PO Defreitas spoke. At the time of his interview, he did not recall being pushed by PO Defreitas but his memory was refreshed by viewing the video of the incident. He recalled PO Defreitas pushing him in the chest after exiting the vehicle and telling him to go home because he was drunk.

PO Defreitas stated that as he prepared the Complaint Report in his vehicle, § 87(2)(b) stuck his head into the driver's side window but did not put his whole head in and got close to his face. He asked § 87(2)(b) 2-3 times to step away from the vehicle. When § 87(2)(b) did not comply, he opened the car door and it struck § 87(2)(b) in the face. PO Defreitas stated that his intention was to guide § 87(2)(b) away from the vehicle with the car door. PO Defreitas stated that § 87(2)(b) continued to curse and get in his face so he pushed § 87(2)(b) away from him but that it was not excessive. PO Defreitas did not recall if he issued any commands to § 87(2)(b) before he pushed him.

PO Archange stated that § 87(2)(b) aggressively walked towards the RMP but did not hear any conversation between PO Defreitas and § 87(2)(b). She specifically said that PO Defreitas did not issue any commands to § 87(2)(b) to step away from the vehicle before opening the door. She also stated that § 87(2)(b) screamed at PO Defreitas in his face, which caused PO Defreitas to push him away and knock him to the ground.

PO Winberry stated that when he was in his vehicle, he heard yelling and looked into the side mirror. He saw § 87(2)(b) sticking his head into PO Defreitas' vehicle but did not see the initial approach. PO Winberry stated that he heard PO Defreitas yell something at § 87(2)(b) although he did not hear what it was. He then saw PO Defreitas open the car door and the door hit § 87(2)(b) in the head. PO Winberry then grabbed his radio and did not see any further interaction between PO Defreitas and § 87(2)(b).

The video attached above begins with § 87(2)(b) approaching PO Defreitas' RMP. § 87(2)(b) approached in a non-threatening manner and did not stick his head into the window. § 87(2)(b)'s head was not close to PO Defreitas' face and was



**Allegation E – PO Claymont Defreitas threatened § 87(2)(b) with the use of force.**

**Allegation F – PO Claymont Defreitas interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) stated that he went to take a picture of the police vehicle's license plate. He stepped in front of the car and PO Defreitas moved the car forward towards him but did not strike him.

PO Defreitas and PO Archange both stated that § 87(2)(b) stepped in front of the RMP to block them from leaving the location. PO Defreitas stated that he could have backed up to leave but instead moved forward because § 87(2)(b) was not directly in front of the vehicle. He stated that moving forward was not an attempt to threaten § 87(2)(b) with the vehicle.

The video showed that at 5:06 of the video, § 87(2)(b) stepped directly in front of the vehicle and bent over to take a photo of the license plate. He stood approximately 3-4 feet away from the vehicle. If PO Defreitas wanted to leave the location, he had plenty of room to turn and pull away from the location. Additionally, nothing obstructed him from backing up. Instead, PO Defreitas drove forward straight towards § 87(2)(b) and stopped within inches of his body. § 87(2)(b) backed away from the vehicle and PO Defreitas turned on the turret lights. He moved the car forward again and § 87(2)(b) stepped out of the way.

NYPD Patrol Guide Procedure 203-11 states that officers must use the minimum amount of force necessary during a police encounter (BR 02).

According to a Finest Message from August 6, 2014, officers are not permitted to interfere with a person's use of a recording device whether it is video, audio or photography during a police encounter (BR 04).

§ 87(2)(g)

---

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature                      Print                      Date